

DRAWING AMENDMENTS

The Applicant submits four replacement sheets of drawings to replace the ones currently found in the application.

REMARKS

Restriction Requirement

In the Office Action, the Examiner has issued a restriction requirement under 35 U.S.C. § 121 asserting that two distinct inventions are claimed in the patent application identified as follows: Claims 11 through 17, 19 and 20 drawn to Invention I for a test strip kit for measuring the optical properties of a sample, classified in class 422, subclass 82.05; and Claims 22 and 23 drawn to Invention II for a test strip kit for measuring the electrical properties of a sample, classified in class 422, subclass 82.01.

Applicants hereby elect to prosecute in this application, Claims 11 through 17, 19 and 20 of Invention I, without traverse.

Objections to the Specification and Claims

The Examiner has objected to the specification and claims for informalities. Applicant has amended both the specification and the claims as set forth above to correct the errors identified by the Examiner. Accordingly, the Examiner's objections to the specification and claims should be withdrawn. Additionally, each the claims 11-17, 19 and 20 have been amended herein to remove the reference numerals corresponding to the drawings and to correct grammatical errors therein.

Objection to the Drawings under 37 CFR §1.84(p)(5)

The Examiner has objected to the drawings because the reference numeral 98 is not included in Fig. 10 as set forth in the specification on page 9. Applicant has amended the specification on page 9 to clarify that the nose 98 is not shown in Fig. 10. Accordingly, the objection to the drawings should be withdrawn. Additionally, Applicant has submitted herewith formal drawings to replace the drawings originally filed with the application. The replacement drawings do not contain new matter.

Claim Rejections Under 35 U.S.C. § 102

Claims 11 and 12 under 35 U.S.C. § 102(a) as allegedly being anticipated by U.S. Patent No. 5,424,035 to Hönes et al. (hereinafter “Hönes”).

Hönes discloses a test strip analysis system including an analysis apparatus with a test strip holding device and matching test strips. The holding device serves to position a test strip in a defined position relative to a measuring unit and includes a test strip seating device. The test strip seating device includes a support located to engage a front section of the test strip when the test strip is in a measuring position. The support is offset in height relative to the middle plane of the seating device in the test field area. Thus, in the Hönes device, the middle plane of the seating device in the test field area, is not offset in height with respect to the seating device.

In contrast, claim 11 as amended herein, recites a test field system including *inter alia*, a test strip receiver having two holding means spaced from one another on edge areas of a support surface for holding fast associated edges of a test strip, the support surface in the middle area in the middle area between the holding means is vertically displaced from the edge areas such that the test field of a test strip inserted in the test strip receiver is spaced apart from the support surface. Clearly, as shown in Fig. 3 of Hönes, the test field of a test strip inserted in the Hönes device lies flush with the seating device and is not spaced apart from the seating device as set forth in Applicant’s amended claim 11.

To support an anticipation rejection under 35 U.S.C. § 102, a single prior art reference must disclose each and every element or limitation in the claim. As set forth above, Hönes does not teach or suggest each and every element of Applicant’s claim 11 as amended herein. Therefore, the rejection of claim 11 under 35 U.S.C. § 102 cannot be maintained and should be withdrawn.

Moreover, because claim 12 depends from claim 11 and thereby incorporates the limitations of claim 11, claim 12 is likewise deemed not anticipated by Hönes for at least the reasons set forth for claim 11. Accordingly, for at least the reasons set forth above,

the rejections of claims 11 and 12 under 35 U.S.C. § 102(b) should be withdrawn and these claims allowed.

Claims 13 and 14 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,281,395 to Markart et al. (hereinafter "Markart").

Markart discloses a test carrier analysis system for analyzing a constituent of a body fluid including a test carrier, a code carrier and an evaluation device. The evaluation device includes a catching element 24 attached to a bottom portion of the device and preloaded in the direction of a test carrier support 20. If a test carrier is located in a measuring position, the catching element 24 engages with a catching projection 25 in a matching recess 26 in the test carrier 2. (See Markart, col. 5, ll. 15-22). Thus, in Markart, the catching element 24 is not attached to the test carrier support.

Claim 13 of the present application as amended herein recites a test strip system including a test strip receiver (16) having an outer insertion end and an inner end and a spring arm extending outwardly from the support surface toward the inner end of the strip receiver. The spring arm is elastically deflectable in a direction toward the support surface wherein the spring arm engages an end portion of the test strip inserted in the strip receiver urging the test strip against a counter-surface. The device of Markart does not teach a strip receiver having a spring arm extending outwardly therefrom as recited in amended claim 13 as stated by the Examiner. In fact, Fig. 4 of Markart clearly shows that the catching element 24 does not extend outwardly from the carrier support 20 as recited in Applicant's amended claim 13. Accordingly, Markart does not teach each and every element of Applicant's claim 13 as amended herein. Therefore, the rejection of claim 13 under 35 U.S.C. § 102 based on Markart cannot be maintained and should be withdrawn.

Claim 14 depends from claim 13 and thereby includes all of the limitations of claim 13. Therefore, claim 14 is also deemed not anticipated by Markart for at least the reasons set forth above for claim 13. Accordingly, for at least the reasons set forth above, the rejections of claims 13 and 14 under 35 U.S.C. § 102(b) should be withdrawn and these claims allowed.

Claims 15-17, 19 and 20 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,780,283 to Meinecke et al. (hereinafter "Meinecke").

Meinecke discloses an apparatus for evaluating components of a body fluid on a test carrier. The test carrier has an insertion end to be inserted into the apparatus and a handling end. The test carrier is positioned and securely held in a measurement position in such a manner that its test field is present in a definite position with regard to the measurement unit. The positioning element includes at least two holding elements, one of which firmly holds the test carrier close to its insertion end and the other of which firmly holds the test carrier close to its handling end. A supporting surface being provided on which the test carrier lies at least partly in its measurement position. (See Mienecke, Abstract, Figs. 1 and 2).

In contrast, claim 15 as amended herein recites a test strip system including a pivotal clamping lever overlying the support surface and supported for movement about an axis parallel to the support surface, the clamping lever including a clamping arm biased toward the support surface engageable with a surface of the test strip opposite the support surface for securing the position of the test strip relative to the support surface. Meinecke does not disclose a clamping arm engageable with a surface of a test strip that is opposite the test carrier as recited in claim 15. The Meinecke device shows a pivotal cam 26 engageable with an end of the test strip and does not disclose a clamping arm overlying the test strip as recited in Applicant's claim 15. Accordingly, Markart does not teach each and every element of Applicant's claim 15 as amended herein. Therefore, the rejection of claim 15 under 35 U.S.C. § 102 based on Markart cannot be maintained and should be withdrawn.

Claims 16, 17, 19 and 20 each depend either directly or indirectly from claim 15 and thereby includes all of the limitations of claim 15. Therefore, claims 16, 17, 19 and 20 are also not anticipated by Markart for at least the reasons set forth above for claim 15. Accordingly, for at least the reasons set forth above, the rejections of claims 16, 17, 19, and 20 under 35 U.S.C. § 102(b) should be withdrawn and these claims allowed.

Priority Claim

Applicants will submit in another filing a certified copy of the foreign priority document as required under 35 U.S.C. § 119(b) as soon as the same is available.

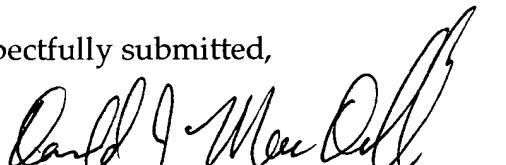
Conclusion

In view of the foregoing, it is respectfully submitted that claims 11-17, 19 and 20 are allowable. All issues raised by the Examiner having been addressed herein, an early action to that effect is earnestly solicited.

Applicants believe no fee is due for this Response, however, should there be any deficiency in fees associated with the filing of this Response, please charge our Deposit Account No. 13-0235.

Respectfully submitted,

By



Donald J. MacDonald, Esq.
Registration No. 42,823
Attorney for Applicant(s)

McCORMICK, PAULDING & HUBER LLP
CityPlace II, 185 Asylum Street
Hartford, CT 06103-4102
Tel: (860) 549-5290
Fax: (413) 733-4543